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**FISCAL IMPACT STATEMENT**

**LS 6309**

**BILL NUMBER:** SB 161

**NOTE PREPARED:** Feb 20, 2004

**BILL AMENDED:** Feb 19, 2004

**SUBJECT:** Hospital Repayment of Medicaid Overpayment.

**FIRST AUTHOR:** Sen. Miller

**FIRST SPONSOR:** Rep. Brown, C.

**BILL STATUS:** CR Adopted - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
X FEDERAL

**IMPACT:** State

**Summary of Legislation:** (Amended) This bill eliminates a provision under which a hospital was allowed 180 days to respond to a notice that the hospital was overpaid by the Medicaid program. The bill makes hospitals subject to the general provision allowing 60 days for a response.

It provides that certain Medicaid providers who have been overpaid do not owe the state interest.

The bill also provides that a third party who contracts with the Division of Mental Health and Addiction may: (1) provide competency restoration services; and (2) initiate a regular commitment proceeding. It also requires a defendant committed to the Division who subsequently attains competency to be immediately returned to the court for trial unless the provider of restoration services files a petition objecting to the immediate return. The bill further provides that a psychologist or psychiatrist appointed in a competency hearing may not be an employee or a contractor at a state institution.

The bill also prohibits certain provisions in health provider reimbursement agreements.

**Effective Date:** July 1, 2004.

**Explanation of State Expenditures:** (Revised) *Health Insurance contracts:* This bill provides that an agreement between an insurer and a provider may not contain a provision that requires the provider to offer to the insurer a reimbursement rate that is equal to or lower than the lowest reimbursement rate that the provider offers to another insurer. Additionally, a contract between a health maintenance organization and a participating provider may not contain a provision that requires the participating provider to offer to the health maintenance organization a reimbursement rate that is equal to or lower than the lowest reimbursement rate that the participating provider offers to another health maintenance organization. Violations of these

provisions would be unfair or deceptive acts or practices in the business of insurance. Individuals suspected of violating the prohibition on unfair and deceptive acts or practices may be subject to a hearing by the Commissioner of Insurance. Adding the proposed prohibitions will increase the number of violations for which a hearing may ensue; however, the Department of Insurance should be able to handle any additional expenses given its current budget and resources.

The impact of the elimination of these contract provisions on state and local government health insurance benefit costs is indeterminate. Elimination of the ability to use these contract provisions may increase competition for covered lives among insurance providers, it may tend to reduce prices, or it may have no long term impact on the overall price of health care or healthcare insurance.

*Incompetence to Stand Trial:* This bill would affect the expenditures of the Department of Corrections (DOC) and the Division of Mental Health and Addiction (DMHA). Total state expenditures would not likely be significantly affected if the number of defendants found incompetent to stand trial remained relatively low. The expenditures that would be affected would likely fall within existing appropriations and/or be shifted between the two agencies. The DMHA, however, reports that additional funding will be necessary if the number of defendants significantly increases.

This bill allows the DMHA to contract with third-party entities to provide services for defendants in either a residence, community setting, or correctional facility. It is likely that a slight decrease in expenditures will be realized by the DMHA if a contract is for services in either a residence or community setting. However, if the services are provided in a correctional facility, the DMHA would likely experience an increase in expenditures. The bill would affect very few defendants. Thus, any increases or decreases in expenditures would be minimal.

This bill also allows a defendant's service provider to petition the court to retain the defendant (instead of returning them to court) and provide additional services. The DMHA may assume additional expenditures for providing the extended services. Furthermore, the DOC may observe a slight reduction in expenditures. The DMHA would absorb the cost of housing the defendant. The DMHA reports that this bill will only apply to approximately 1% to 2% of defendants, and so any increases or decreases in expenditures would be small.

*Background - Incompetence to Stand Trial:* Current statute requires the DMHA to confine a defendant to a state institution if (1) they are not competent to stand trial or (2) their competence to stand trial is questionable. This bill allows the DMHA to contract with third-party entities to provide restoration services in alternative venues. Contracted restoration services may be provided to defendants (1) in the location where the defendant currently resides or (2) in the least restrictive setting appropriate to the needs of the defendant. The latter includes correctional facilities.

Current statute also requires a defendant whose competence to stand trial was previously questioned to be returned to court after their competence has been certified by the DMHA. The bill would allow the DMHA (or a DMHA-contracted entity) to petition the court to postpone the return of a defendant.

*DMHA and DOC budgets:* Total state appropriations for the DMHA for SFY 2004 are \$273 M; the DOC was appropriated \$136.7 M. Any impacts on the DOC or the DMHA expenditures would (1) fall within existing department appropriations, and/or (2) shift between the two agencies.

The DMHA, however, reports that additional funding will be necessary if the number of defendants found incompetent to stand trial significantly increases.

*Contracting Costs:* Contract amounts for the DMHA vary depending on the level of services a defendant requires. Furthermore, the cost to contract for services (where the defendant is currently residing or in a community setting) would be either equal to or slightly less than the cost to provide services in a state institution. Reductions in expenditures would likely be a result of lower housing costs. The DMHA, however, reports that decreases in expenditures would be minimal; this bill would apply to very few defendants. There are approximately one hundred defendants residing in state institutions (for incompetence to stand trial issues). Of these defendants, approximately five would be affected by this bill. Reduced expenditures to the DMHA are dependent on the number of defendants housed in residential or community settings and their contract costs.

*Department of Corrections:* Current statute requires defendants who are found incompetent to stand trial to be moved to a state institution. State institutions, however, do not have the ability to house high-security inmates. This bill would allow the DOC to retain the defendant in the correctional facility. In addition, it allows the DMHA to either contract for services for the defendant or provide services themselves. Expenditures for housing the defendant would be shifted from the DMHA to the DOC.

The DMHA reports that contracting for services at a correctional facility would likely be more expensive than providing services at a state institution. Defendants residing in correctional facilities would probably require a higher level of services. For example, the use of a forensic psychiatrist is often necessary. Forensic psychiatrists provide specialized services, thus, their contracts will likely be negotiated at a higher rate than that of other psychiatrists. Furthermore, there are only a few forensic psychiatrists in Indiana; contracts may need to include travel expenses. It is likely that the forensic psychiatrists will not reside in close proximity to the defendant.

Currently, there are two defendants in correctional facilities that this bill would apply to. Increases in expenditures for the DMHA are dependent on the number of defendants affected by this bill and the cost to contract for services needed.

*Director or Medical Director Petitions:* This bill also allows the director or medical director of the entity (1) from which the defendant is receiving competency restoration services or (2) to which the defendant has been civilly committed, to submit a petition to postpone the return of the defendant to court. This would allow the DMHA to retain the defendant and provide additional services. A defendant may be retained for six months, less any time the defendant has already received services. The DMHA would assume additional expenditures for housing the defendant and providing treatment. The DOC would realize a decrease in expenditures. The cost to house the defendant during the additional time period would be absorbed by the DMHA. The DMHA reports that this may occur one or two times a year, thus, increases in expenditures for the DMHA and decreases in expenditures for the DOC would be minimal. Actual increases and decreases in expenditures are dependent on the number of defendants who are retained and the length of time that they are retained.

*Background Information:* A defendant is considered competent to stand trial if (1) they have the ability to understand the proceedings and (2) they have the ability to participate in their own defense. The average cost to house a resident in a state institution is approximately \$350 per day. The cost to house a male inmate is between \$48.06 (minimal security) and \$83.78 (maximum security) a day. The cost to house a female inmate is \$188.29 a day. Differences in housing costs are mainly due to additional mental health services provided to defendants residing in state institutions and excess capacity in the state institutions.

**Explanation of State Revenues:** (Revised) *Repayment of Medicaid Overpayment:* This bill would standardize the provisions that apply to Medicaid providers' procedures under the circumstances of a Medicaid overpayment. Under current statute, all providers that receive an overpayment notice are subject

to interest payments on the amount that the Office determined was overpaid from the date of the overpayment. Procedurally, a provider may elect to request a hearing and appeal the overpayment determination, but the interest accrues on the time the overpayment remains unpaid. The amount of interest revenue that may be involved in a determination of overpayment has nothing to do with how long the specific provider type has to respond to the initial notice. The interest is calculated from the time the overpayment was actually disbursed by the Office to the time when the provider repays the overpayment. If the administrative appeals process results in a determination that the provider was not overpaid, the Office would return the amount the Office believed was an overpayment plus any interest the provider may have included. The Office would also pay the provider interest on the money from the date of the provider's repayment. The interest rate is the same rate that is used by the Department of State Revenue.

The bill also provides that certain Medicaid providers that have been overpaid, do not owe interest on the overpayments. Interest due to the state under the provisions of the bill must be as a result of the provider violating a federal or state statute, rule, or published Medicaid policy. According to the Office of Medicaid Policy and Planning, the total amount of interest payments accrued from providers in FY 2003 for this purpose was about \$500,000. (The amount of interest the state owed providers for that year was about \$10,000.) The amount of interest that would not be collected as a result of the provision in the bill is unknown; but it is assumed to be some portion of the current collections. Thus, the maximum amount of interest that would possibly be forgone by the state is estimated to be \$500,000 per year, of which the federal government would lose its share of 62%. The amount of interest charged each year can vary significantly. This also assumes that there is no change in Medicaid payment processes or provider behavior as a result of the elimination of interest charges for overpayments.

The state's maximum share of this interest revenue forgone is about 38%, or about \$190,000. The federal government would lose the balance.

*Health Insurance contracts:* As a result of a hearing, violators may be ordered to cease and desist from the unfair or deceptive act or practice, and the Commissioner may order the payment of a civil penalty of not more than \$25,000 for each act or violation. If the person knew or reasonably should have known that he or she was in violation, the penalty may be not more than \$50,000 for each act or violation. All civil penalties imposed and collected are deposited in the state General Fund.

#### **Explanation of Local Expenditures:**

#### **Explanation of Local Revenues:**

**State Agencies Affected:** The Office of Medicaid Policy and Planning and the Division of Mental Health and Addiction of the Family and Social Services Administration, the Department of Corrections, and the Department of Insurance.

#### **Local Agencies Affected:**

**Information Sources:** Melanie Bella, Assistant Secretary for Medicaid, Family and Social Services Administration, 317-233-4455; Willard Mays, Assistant Deputy Director for Policy Development, Division of Mental Health and Addiction, 232-7894; and Suzanne Clifford, Director, Division of Mental Health and Addiction, 232-7845.

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